

SENATE BILL No. 132

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-11-4; IC 3-14-2; IC 35-50-2.

Synopsis: Absentee ballots. Restricts who may assist a voter in applying for an absentee ballot and who may transmit a completed absentee ballot application to the circuit court clerk. Provides that a person who does certain acts with respect to an absentee ballot application or an absentee ballot commits absentee ballot fraud, a Class D felony. Provides that a court sentencing an individual convicted of absentee ballot fraud may suspend only that part of the sentence that is in excess of the minimum sentence. Provides that a judge may not enter a judgment of conviction of a Class A misdemeanor for absentee ballot fraud.

Effective: July 1, 2004.

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January 6, 2004, read first time and referred to Committee on Elections and Civic Affairs.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 132

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-11-4-2, AS AMENDED BY P.L.126-2002,
2 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 2. (a) A voter who wants to vote by absentee
4 ballot must apply to the county election board for an official absentee
5 ballot.

6 (b) **Only the following may assist a voter in completing an**
7 **absentee ballot application:**

8 (1) **An individual caring for the voter, if the voter is confined.**

9 (2) **A member of the voter's household.**

10 (3) **An individual who is the voter's attorney in fact.**

11 (4) **An individual designated by the circuit court clerk to**
12 **provide assistance under this subsection.**

13 **An individual assisting a voter in completing an absentee ballot**
14 **application may not sign the application unless the voter is unable**
15 **to sign the application.**

16 (c) **If an individual assists a voter in completing an absentee**
17 **ballot application, the application must indicate all of the**



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following:

(1) The name of the individual.

(2) The status of the individual as described in subsection (b) that authorizes the individual to provide the assistance.

(3) Whether the individual signed the application for the voter.

(d) If an individual applies for or assists the completion of an application for an absentee ballot as the properly authorized attorney in fact for a voter, the attorney in fact must attach a copy of the power of attorney to the application.

SECTION 2. IC 3-11-4-4, AS AMENDED BY P.L.126-2002, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Applications may be made:

(1) in person;

(2) by fax transmission; or

(3) by mail;

on application forms furnished by the county election board or approved by the commission.

(b) Application forms shall:

(1) be furnished to all central committees in the county ~~no~~ not later than:

(A) June 15, for a general election or a special election ordered under IC 3-12-8-17 or IC 3-12-11-18 following the primary election; or

(B) January 15, for a primary election or a special election ordered under IC 3-12-8-17 or IC 3-12-11-18 following the general election;

(2) be:

(A) mailed; or

(B) transmitted by fax;

upon request, to a voter applying by mail, by telephone, or by fax; and

(3) be delivered to a voter in person who applies at the circuit court clerk's office.

(c) The county election board shall:

(1) accept; and

(2) transmit;

applications for absentee ballots under subsection (a) by fax. A county election board shall accept an application for an absentee ballot transmitted by fax even though the application is delivered to the county election board by a person other than the person submitting the application.

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(d) Only the following may fax, mail, or hand deliver a completed absentee ballot application to the circuit court clerk or the office of the board of elections and registration (whichever is applicable):

(1) The voter.

(2) An individual caring for the voter, if the voter is confined.

(3) A member of the voter's household.

(4) An individual who is the voter's attorney in fact.

SECTION 3. IC 3-14-2-16, AS AMENDED BY P.L.38-1999, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. A person who knowingly does any of the following commits a Class D felony:

(1) Applies for or receives a ballot in a precinct other than that precinct in which the person is entitled to vote.

(2) Except when receiving assistance under IC 3-11-9, shows a ballot after it is marked to another person in such a way as to reveal the contents of it or the name of a candidate for whom the person has voted.

(3) Except when offering assistance requested by a voter in accordance with IC 3-11-9, examines a ballot that a voter has prepared for voting or solicits the voter to show the ballot.

(4) Receives from a voter a ballot prepared by the voter for voting, except:

(A) the inspector;

(B) a member of the precinct election board temporarily acting for the inspector;

(C) a member of a county election board or an absentee voter board acting under IC 3-11-10; or

(D) a member of the voter's household or an individual designated as attorney in fact for the voter, when delivering an envelope containing an absentee ballot under IC 3-11-10-1.

(5) Receives a ballot from a person other than one of the poll clerks or authorized assistant poll clerks.

(6) Delivers a ballot to a voter to be voted, unless the person is:

(A) a poll clerk or authorized assistant poll clerk; or

(B) a member of a county election board or an absentee voter board acting under IC 3-11-10.

(7) Delivers a ballot (other than an absentee ballot) to an inspector that is not the ballot the voter receives from the poll clerk or assistant poll clerk.

(8) Delivers an absentee ballot to a team of absentee ballot counters appointed under IC 3-11.5-4-22, a county election board,

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a circuit court clerk, or an absentee voting board under IC 3-11-10 that is not the ballot cast by the absentee voter.

SECTION 4. IC 3-14-2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 31. A person who knowingly or intentionally does any of the following commits absentee ballot fraud, a Class D felony:**

(1) **Completes an absentee ballot application for a voter if the person is not:**

(A) the voter; or

(B) authorized under this title to assist the voter in completing the voter's absentee ballot application.

(2) **Assists a voter in completing the voter's absentee ballot application if the person is not authorized under this title to assist the voter in completing the voter's absentee ballot application.**

(3) **Signs an absentee ballot application for a voter if the person is not authorized under this title to sign the voter's absentee ballot application.**

(4) **Faxes, mails, or hand delivers a completed absentee ballot application to the circuit court clerk or the office of the board of elections and registration (whichever is applicable) if the person is not authorized under this title to fax, mail, or hand deliver the application to the clerk or office.**

(5) **Completes an absentee ballot application and falsely states information to entitle the voter to vote an absentee ballot by mail under IC 3-11-4-18 and IC 3-11-10-24.**

(6) **Except when offering assistance requested by a voter in accordance with IC 3-11-9, examines an absentee ballot that a voter has prepared for voting or solicits the voter to show the absentee ballot.**

(7) **Receives from a voter an absentee ballot prepared by the voter for voting. This subdivision does not apply to any of the following:**

(A) The inspector.

(B) A member of the precinct election board temporarily acting for the inspector.

(C) A member of a county election board or an absentee voter board acting under IC 3-11-10.

(D) A member of the voter's household or an individual designated as attorney in fact for the voter, when delivering an envelope containing an absentee ballot under IC 3-11-10-1.

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(8) Delivers an absentee ballot to a voter to be voted. This subdivision does not apply to any of the following:

(A) A poll clerk or authorized assistant poll clerk.

(B) A member of a county election board or an absentee voter board acting under IC 3-11-10.

(9) Delivers to a team of absentee ballot counters appointed under IC 3-11.5-4-22, a county election board, a circuit court clerk, or an absentee voting board under IC 3-11-10 an absentee ballot that is not the ballot cast by the absentee voter.

SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.224-2003, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.5:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

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- 1 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 2 (F) rape (IC 35-42-4-1) as a Class A felony;
- 3 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 4 felony;
- 5 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 6 felony;
- 7 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 8 with a deadly weapon;
- 9 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 10 injury;
- 11 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 12 or with a deadly weapon;
- 13 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 14 weapon;
- 15 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 16 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 17 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 18 (IC 35-48-4-1) if the court finds the person possessed a firearm
- 19 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 20 person delivered or intended to deliver to a person under
- 21 eighteen (18) years of age at least three (3) years junior to the
- 22 person and was on a school bus or within one thousand (1,000)
- 23 feet of:
- 24 (i) school property;
- 25 (ii) a public park;
- 26 (iii) a family housing complex; or
- 27 (iv) a youth program center;
- 28 (P) dealing in a schedule I, II, or III controlled substance
- 29 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 30 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 31 person delivered or intended to deliver to a person under
- 32 eighteen (18) years of age at least three (3) years junior to the
- 33 person and was on a school bus or within one thousand (1,000)
- 34 feet of:
- 35 (i) school property;
- 36 (ii) a public park;
- 37 (iii) a family housing complex; or
- 38 (iv) a youth program center;
- 39 (Q) an offense under IC 9-30-5 (operating a vehicle while
- 40 intoxicated) and the person who committed the offense has
- 41 accumulated at least two (2) prior unrelated convictions under
- 42 IC 9-30-5; or

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(R) aggravated battery (IC 35-42-2-1.5); or

(S) absentee ballot fraud under IC 3-14-2-31.

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 6. IC 35-50-2-7, AS AMENDED BY P.L.98-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances. In addition, he may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography

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1 (IC 35-42-4-4(c)); or
2 **(4) the offense is absentee ballot fraud under IC 3-14-2-31.**
3 The court shall enter in the record, in detail, the reason for its action
4 whenever it exercises the power to enter judgment of conviction of a
5 Class A misdemeanor granted in this subsection.

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